SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1973

JAN 28 1973

No. 72-1028

FRED R. FIELD, JR., individually and as President of the New York District Council of the International Longshoremen's Association, Executive Officer of Local 856, and on behalf of all longshoremen, seamen and citizens whose rights are involved and/or have an interest in the establishment of the World Trade Center in the downtown area of the Borough of Manhattan, City and State of New York,

Petitioner,

vs.

UNITED STATES OF AMERICA, THE CITY OF NEW YORK and the PORT OF NEW YORK AUTHORITY,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

JACOB RASSNER
Attorney for Petitioner
15 Park Row
New York, N.Y.
BA 7-2618

THE BECK BAILEY SERVICE, INC. Telephone: (212) 447-1338

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SUPREME COURT OF THE UNITED STATES
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FRED R. FIELD, JR., individually and as President of the New York District Council of the International Longshoremen's Association, Executive Officer of Local 856, and on behalf of all longshoremen, seamen and citizens whose rights are involved and/or have an interest in the establishment of the World Trade Center in the downtown area of the Borough of Manhattan, City and State of New York,

Petitioner,

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UNITED STATES OF AMERICA, THE CITY OF NEW YORK and the PORT OF NEW YORK AUTHORITY,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Petitioners pray that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit entered in the above entitled case on October 30, 1972.

OPINION BELOW

The opinion of the United States District Court for the Southern District of New York, by Bauman, J. dated March 28, 1972, on file in the record on appeal, pages 10 through 22, inclusive, reported at 340 Fed Supp. 175.

The decision was affirmed, without opinion, by the United States Court of Appeals for the Second Circuit on October 30, 1972.

JURISDICTION OF THIS COURT

The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

To what extent may Congress authorize sale for private use or authorize fill of a portion of a navigable river of the United States, so as to allow the same to be used as a garbage dump and land fill for a base for a mercantile real estate business.

Under what circumstances may our Federal Courts foreclose to American citizens redress for violation of fundamental constitutional rights to freedom to earn a living by reasonable means of access and use of the navigable rivers of the United States and continued enjoyment of vested rights.

Is abstention by a Federal Court a matter of discretion as to a complaint based on violation of fundamental constitutional rights to earn a livelihood by reasonable access and use of the navigable waters of the United States.

May the provisions of the Rivers and Harbors Appropriation Act of 1899, § 13, 33 U.S.C.A. § 407, be modified or nullified by a State Governor's statement that a river is non-navigable when, in fact, in actual operation it is a daily and continuous operation in use for maritime shipping employing thousands of citizens and hundreds of ships and spending millions of dollars for upkeep and repair of docks and piers.

May a private interest be granted tax privileges tantamount to waiver of millions of dollars of taxable revenue in the furtherance of a mercantile undertaking.

Does the enactment of ex post facto legislation ratifying the issuance of a permit by the Army Corps of Engineers eliminate the question of its validity under Article 3, § 1, et seq. U.S.C. in depriving petitioners of their means of livelihood and in violation of the Rivers and Harbors Appropriation Act of 1899, § 12, 33 U.S.C.A. § 407.

Did the Court below lack jurisdiction of the subject matter to provide declaratory and injunctive relief to the petitioners; by reason of the aforesaid legislation.

Where fundamental human civil rights are at issue under the Constitution involving the economic interests of the whole labor segment of an entire industry, does the Court have the discretion to apply the doctrine of abstension.

STATEMENT

Petitioner, on his own behalf, and on behalf of some 20,000 longshoremen of his Union, sought redress for interference by respondents with the petitioners' constitutional

rights to earn a living from having the use of navigable waters and access thereto, as a result of the wrongful acts of respondents in dumping debris and refuse into the river and filling an area of some 23.5 acres off the west side of Manhattan from Liberty Street to Barclay Street, covering an area which included piers #3 to #13, and the Court abstained from considering the question of preferential and unfair city tax benefits and exemptions.

Petitioners allege various denials of fundamental constitutional rights summarized in paragraph thirty-first of the complaint (31) and the affidavit of petitioner, Fred R. Field (45-51), which show a factual situation supporting the subject matter of the complaint.

The Court below affirmed from the Bench, without opinion, the decision of the District Court dismissing the complaint on erroneous holdings, including that the complaint was based on a challenge of ownership of certain piers when the complaint did not raise that question at all. The question was primarily deprivation and elimination of a large section of the Hudson River as a navigable stream and preferential and illegal tax benefits and exemptions, depriving citizens of some twenty-five million dollars in tax revenues a year.

REASONS FOR GRANTING THE WRIT

The Court below has sustained a decision by the Trial Court which established a radical concept in conflict with well established and uniform law, approving the dumping of unlimited quantities of demolished building materials and other foreign matter as fill in the Hudson River.

The civil rights of every citizen of the United States is affected by the holding in this matter, not only as to the rights to use and enjoyment of navigable waters of the United States, but even more so to the protection of our constitutional rights by our Federal Courts.

The Court below erroneously approved the Trial Court's holding as to abstention which was based, in part, that State Court remedies were available insofar as authorizing the use of a navigable river for realty purposes, in total disregard of the fact that the river was a continuous daily operation employing thousands of citizens and utilizing hundreds of ships and also maintaining and repairing docks and piers at an expenditure of millions of dollars.

POINT I

PETITIONERS WERE DEPRIVED OF THEIR CONSTITUTIONAL RIGHTS TO EARN A LIVELIHOOD AND OF THEIR VESTED RIGHTS TO THE ACCESS AND USE OF A NAVIGABLE RIVER WHEREBY TO EARN THEIR LIVELIHOOD.

The holding by the Court below deprived petitioners of vested rights and is in conflict with well established principles of law, as enunciated by this Court and many Circuit Courts of Appeal as appears by the following:

Rosa L. Stancil, Administratrix of the Estate of George Ben Stancil, Deceased v. United States of America v. J.R. Houska Company, Inc. and Shaw Paint & Wallpaper Company, Inc., 200 F. Supp. 36 (1961) at pages 44-45:

> "A retroactive statute cannot, of course, interfere with or divest vested rights. The great difficulty lies in the attempt

to assign a precise meaning to the term 'vested rights' as any attempt at a definition results only in a conflict in the decisions. Generally speaking, 'vested rights' refer only to those rights which will be protected from legislative interference."

Sagastivelza v. Puerto Rico Housing Authority, 195 F. 2d 289 at page 292:

"...The usual formulation of the rule with respect to retroactive civil legislation is that such legislation is constitutionally objectionable when it deprives a person of a completely vested right. Ettor v. City of Tacoma, 1913, 228 U.S. 148, 33 S.Ct. 428, 57 L.Ed. 773; Western Union Tel. Co. v. Louisville & N.R.R. Co., 1922, 258 U.S. 13, 42 S.Ct. 258, 66 L.Ed. 437; Crane v. Hahlo, 1922, 258 U.S. 142, 147, 42 S.Ct. 214, 66 L.Ed. 514; Coombes v. Getz, 1932, 285 U.S. 434, 442, 52 S.Ct. 435, 76 L. Ed. 866. See Rottschaefer, Constitutional Law, p. 548 (1939)."

Personal Finance Co. of Braddock v. United States, 86 F. Supp. 779 at page 784:

"[8-9] It seems equally clear from these same authorities that the legislative branch of government has no power by subsequent act to declare the construction of a previous act prejudicially affecting constitutional and vested rights which have attached under the prior act and before the passage of the declaratory law. As said in the Stockdale case, supra, 'It may be conceded that Congress cannot, under cover of giving a construction to an existing or expired statute, invade private rights with which it could not interfere by a new or affirmative statute."

POINT II

THE QUESTION OF NAVIGABILITY OF A STREAM IS ONE OF FEDERAL LAW AND NOT STATE LAW.

The Supreme Court of the United States as recently as June 7, 1971 in the case of *Utah v. United States,* 403 U.S. 9, 91 S. Ct. 1775 (1971), passed on the identical question as presented in the case at bar.

This supports petitioners' position that the Hudson River is part of the navigable interstate and international commercial highway and in no way interferes with the principle of public ownership of its bed.

The question of navigability is a federal question. The Court, quoting from the case of *The Daniel Ball,* 10 Wall 557, 563, 19 L.Ed. 999, stated at page 1776 in Utah supra:

> "Those rivers must be regarded as public navigable rivers in law which are navigable in fact. And they are navigable in fact when they are used, or are susceptible of being used, in their ordinary condition, as highways for commerce, over which trade and travel are or may be conducted in the customary modes of trade and travel on water.***"

The Court, in the Utah case supra, continued on page 1776:

> "While that statement was addressed to the navigability of 'rivers' it applies to all water courses. United States v. Oregon, supra, 295 U.S. at 14, 55 S.Ct. at 615."

The United States and not New York City was the sole owner and the only entity having any legal right to divest itself of ownership of the Hudson River and its river bed.

Choctaw Nation v. Oklahoma, 397 U.S. 620, 90 S.Ct. 1328 (1970)

As recently as March 21, 1972, in the case of *United States v. Crow, Pope & Land Enterprises, Inc.*, 340 F. Supp. 25 the Court reaffirmed the legal principle enunciated in the *Daniel Ball, supra*, and with reference to rivers navigable in fact quoted the Supreme Court as follows: (page 32)

> "...and they constitute navigable waters of the United States within the meaning of the Acts of Congress,..."

The decision by the Court below that a navigable water in fact can be declared as being non-navigable as the expedient or basis for dumping fill into said water and rendering it no longer navigable is in conflict with the holding by this Court that the question of navigability of a stream is one of federal law and not state law.

United States of America v. 531.10 Acres in Anderson County, South Carolina, and Duke Power Company and Unknown Owners, 243 F. Supp. 981 (1965)

United States v. State of Utah, 283 U.S. 64, 51 S.Ct. 438, 75 L.Ed. 844 (1931)

United States v. Holt State Bank, 270 U.S. 49, 46 S.Ct. 197, 70 L.Ed. 465 (1926)

POINT III

THE AVAILABILITY OF A STATE REMEDY IS NOT A VALID BASIS FOR FEDERAL COURT ABSTENTION.

Access to the protection of federal courts may not be foreclosed by the existence of state court remedies.

That abstention of the federal court is not justified when the question of constitutional and vested rights are involved, nor when the question of unfair preferential taxation is sought to be reviewed.

The conflict between the holding by the Court below and that of the Supreme Court was clearly shown by the following cases:

In the case of *Robert H. Hargrave et al v. Governor Claude R. Kirk, Jr., et al.*, 313 F. Supp. 944 (1970) the Court stated at page 947:

> "[1-3] We take up defendant's last argument first. We find no special circumstances in this case that would persuade us to apply the doctrine of abstention. The fact that a state remedy is available is not a valid basis for federal court abstention."

In the case of *B.A. Reynolds, etc., et al v. M.O. Sims et al; David J. Vann and Robert S. Vance v. Agnes Baggett, Secretary of State of Alabama, et al.*, 377 U.S. 533, 84 S.Ct. 1362, the Court stated at page 566:

> "When a State exercises power wholly within the domain of state interest, it is insulated from federal judicial review. But such insulation is not carried over when state power is used as an instrument for circumventing a federally protected right."

In the case of *Jerry R. England et al v. Louisiana State Board of Medical Examiners et al.*, 375 U.S. 411, 84 S.Ct. 461, the Court stated at page 416:

> "...we have on several occasions explicitly recognized that

abstention 'does not, of course, involve the abdication of federal jurisdiction, but only the postponement of its exercise.' Harrison v. N.A.A.C.P. 360 U.S. 167, 177, 79 S.Ct. 1025, 1030, 3 L.Ed. 2d 1152; accord, Louisiana P. & L. Co. v. Thibodaux, supra, 360 U.S. at 29, 79 S.Ct. at 1073, 3 L.Ed. 2d 1058."

At page 417:

"...a state court determination may not be substituted, against a party's wishes, for his right to litigate his federal claims fully in the federal courts."

POINT IV

MATTERS HISTORICALLY MERCANTILE DO NOT BECOME MATTERS OF PUBLIC WELFARE UNLESS RATIONALLY RELATED TO THE PUBLIC GOOD.

Citizens may maintain their actions on the basis of standing to sue for loss of tax revenues to the City.

Standing to sue exists when a litigant alleges that he has been caused injury in fact, economic or otherwise.

Citizens Committee for the Hudson Valley v. Volpe, 302 F. Supp. 1083 (1969)

Kalur v. Resor, 335 F. Supp. 1 (1971).

In *Sandra J. Robertson et al v. Robert F. Ott et al; Virginia Hatcher et al v. Robert F. Ott et al.*, 284 F. Supp. 735 (1968) the Court stated at page 737:

[4-6] "The Supreme Court has recently reiterated the incontestable proposition that a state may not make distinctions that are arbitrary or invidious. Avery v. Midland County, Tex., 1968, 390 U.S. 474, 88 S.Ct. 1114, 20 L.Ed. 2d 45.

> In order for a statutory classification to satisfy the requirements of the Equal Protection Clause, it must be related to some proper governmental purpose. Truax v. Raich, 1915, 239 U.S. 33, 42; Schneider v. Rusk, 1964, 377 U.S. 163, 84 S.Ct. 1187, 12 L.Ed. 2d 218."

The decision by the Court below is in conflict with the well established principle laid down by this Court that matters historically mercantile may not constitutionally be treated as matters of public welfare.

POINT V

THE GOVERNMENT MAY NOT AUTHORIZE ALTERATION OR INTERFERENCE WITH NAVIGATION FOR PRIVATE USE IN THE ESTABLISHMENT OF A REAL ESTATE BUSINESS.

The establishment of a real estate business or interference with the navigation, as well as the bed of the Hudson River, has no relation to proper governmental purposes and is unconstitutional.

See authorities cited under Point IV.

POINT VI

THE POWER AND RIGHT OF AN INDIVIDUAL TO EARN A LIVELIHOOD IS IN THE SAME CATEGORY AS HIS PROPERTY RIGHTS.

Petitioners have been denied their Constitutional right by having been deprived of the power of earning a living, which decision by the Court below is in conflict with the principle long established by this Honorable Court that the power and right of an individual to earn a livelihood is in the same category as his property rights.

Local Loan Co. v. Hunt, 292 U.S. 234, 54 S.Ct. 695, 78 L.Ed. 1230 (1933)

Reubin Askew et al v. Robert H. Hargrave et al., 401 U.S. 476, 91 S.Ct. 856.

Hague, Mayor, et al v. Committee for Industrial Organization, et al., 307 U.S. 496, 59 S.Ct. 954.

CONCLUSION

The decision by the Court below sustaining the finding of the Trial Court opens the door to serious destruction of fundamental constitutional rights and merits review by this Honorable Court.

Respectfully submitted,

JACOB RASSNER
Attorney for Petitioner

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the thirtieth day of October one thousand nine hundred and seventy-two.

Present: HON. J. EDWARD LUMBARD
HON. WILFRED FEINBERG
HON. JAMES L. OAKES
Circuit Judges,

Fred R. Field, Jr., individually and as President of The New York District Council of The International Longshoremen's Association, Executive Officer of Local 856 and on behalf of all Longshoremen, Seamen and Citizens whose rights are involved and or have an interest in the establishment of a World Trade Center in the Downtown Area of the Borough of Manhattan, City and State of New York,

Plaintiff-Appellant,

v.

United States of America, The City of New York And the Port of New York Authority,

Defendant-Appellees.

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed with costs to be taxed against the appellant.

A. DANIEL FUSARO,
Clerk

OPINION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FRED R. FIELD, JR., individually and as President of the New York District Council of the International Longshoremen's Association, Executive Offices of Local 856, and on behalf of all longshoremen, seamen, and citizens whose rights are involved and/or have an interest in the establishment of a World Trade Center in the downtown area of the Borough of Manhattan, City and State of New York,

Plaintiffs,

-against-

UNITED STATES OF AMERICA, THE CITY OF NEW YORK and THE PORT OF NEW YORK AUTHORITY,

Defendants.

BAUMAN, J.

Defendants United States of America and Port of New York Authority have moved separately pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure to dismiss this action for lack of jurisdiction over the subject matter and failure to state a claim upon which relief can be granted. Defendant City of New York has joined in the motions. For the reasons stated below the motions of all defendants will be granted.

This action grows out of the construction of the World

Trade Center in downtown Manhattan. Plaintiff Field, President of the New York Council of the International Longshoremen's Association, sues individually and on behalf of a class consisting of "all longshoremen, seamen and citizens whose rights are involved and/or have an interest in the establishing of a world trade center in the downtown area of Manhattan, City and State of New York."[1] As the complaint alleges, the Port of New York Authority is a municipal corporate instrumentality created in 1921 by compact of the States of New York and New Jersey with the consent of the Congress of the United States. It is responsible for maintaining bridges, marine and air terminals and other facilities within the New York Port District. The complaint further alleges the Port of New York Authority undertook the construction of certain buildings to be known as the World Trade Center after it had represented to the public that "the undertaking would be of financial and other economic benefit to the people of New York and that it would create improvement in all forms of commerce and trade."

The complaint rambles on alleging that instead of benefitting the people of New York and the Port District, creation of the World Trade Center has harmed them in the following ways:

1. Longshoremen and seamen have lost jobs and been deprived of a so-called "Constitutional right to the use and benefit of waterfront property and piers and the free use of navigable rivers" because land fill taken from the excavation at the site of the World Trade Center was used to fill in an area of approximately 23.5 acres in the Hudson River on the west side of Manhattan, eliminating, in the process, Piers #3-13 along the riverfront.

2. The citizens of New York City have been deprived of

tax revenue by the illegal grant of tax exempt status to the World Trade Center by the States of New York and New Jersey.

Plaintiff also claims there is uncertainty concerning the title to the upland created by the fill and as to the Port Authority's right to engage in real estate development. He questions its obligations under the bond issue which finances the Port Authority Trans-Hudson (PATH) railway system as well as the federal tax exempt status of interest on the bonds used to finance the World Trade Center.

I.

Turning first to the question of subject matter jurisdiction as to the defendant United States of America, plaintiff makes the boot-strap argument that jurisdiction exists because the action is for a declaratory judgment pursuant to Title 28, U.S.C.A., Section 2201. However, the Declaratory Judgment Act by itself does not confer subject matter jurisdiction on the federal district courts. *Skally Oil Company v. Phillips Petroleum Co.*, 339 U.S. 667, 671, 672 (1950); *R.E.D.M. Corp. v. LoSecco*, 291 F. Supp. 53, 58 (S.D.N.Y. 1968), aff'd. 412 F. 2d 303 (2d Cir. 1969). Some additional statutory basis must be stated in the complaint. It must also be borne in mind that no questions involving federal taxes may be considered under the Declaratory Judgment Act. Title 28, U.S. Code, Section 2201.

Plaintiff's only jurisdictional basis other than the Declaratory Judgment Act is alleged to be the Federal Tort Claims Act, Title 28, U.S. Code, Section 1346. In that connection, he contends that the Secretary of the Army acting through the Corps of Engineers illegally issued a permit[2] which allowed the Port Authority (with the permission of New York City) to place

the fill generated by the construction of the World Trade Center behind the bulkheads along the Hudson River shoreline which formerly supported Piers 3 to 13. He states that this deprived longshoremen of their jobs and was in violation of their "Constitutional rights to the use of the piers."

Government regulation of economic and commercial activities has been sustained repeatedly in the face of claimed denials of "substantive due process of law" such as plaintiff makes here.[3] The piers in question, except to the extent that Congress imposed limitations, were under the control of the City of New York and were subject to alteration or removal for a public purpose. 1961 City Charter Sections 703, 704; Cf. *Montgomery v. Portland*, 190 U.S. 89, 105 (1903). Plaintiff does not allege a proprietary or franchise interest in the piers. Compare *Appleby v. City of New York*, 271 U.S. 364 (1926). His claim of damage rests on the assertion that he or the longshoremen or seamen who had worked there will find no employment at that place in the future. At most, this might constitute an interference with contract rights. But even assuming such an interference, the Federal Tort Claims Act by its terms provides that it shall not apply to "any claim arising out of ... interference with contract rights." Title 28, U.S. Code, Section 2680(h).

Furthermore, that Act prohibits the institution of an action thereunder "unless the claimant shall have first presented the claim to the appropriate Federal agency and his claim shall have been finally denied by the agency in writing and sent by certified or registered mail." Title 28, U.S. Code, Section 2675. No such procedure appears to have been followed here.

It might be argued that the possibility of subject matter

jurisdiction exists under the judicial review provisions of the Administrative Procedure Act[4] or under the general "federal question" provisions of Title 28, U.S. Code.[5] However, no relief can be afforded by those Sections because of the enactment of legislation in 1968 which had the effect of ratifying the issuance of the permit and eliminating the question of its validity by declaring the filled area to be "nonnavigable waters within the meaning of the laws of the United States",[6] thus removing the matter from the ambit of Title 33, U.S. Code, Section 403.[7]

II.

The complaint fails to allege any statutory basis for jurisdiction as to defendants City of New York and Port of New York Authority. As noted above, any possible "federal question" jurisdiction was eliminated by statute and, as previously set forth, plaintiff's claim of deprivation of a Constitutional right to use the piers is frivolous.

His request for a declaration concerning the obligations of the Port Authority "to provide adequate financing for the continued operation of the Port Authority Trans-Hudson system" presents a non-justiciable issue; that is, there is no "actual controversy" of which the Court might assume jurisdiction. *A fortiori* there can be no such issue concerning potential limitations on future real estate operations in which the Port Authority may become involved. The claim concerning title to the upland created by placing the fill in the river is purely a question of state law and does not raise any federal question.

Lastly, plaintiff claims the grant of tax exempt status to the World Trade Center by the States of New York and New Jersey constitutes 'an unfair competitive advantage to a real

estate development." This may be read as charging a violation of the Equal Protection clause of the Fourteenth Amendment to the United States Constitution, although that is not specifically alleged. If that is what is intended, the Court would have jurisdiction, in its discretion, under the Declaratory Judgment Act to determine his request for a declaration of "what, if any, immunity from taxation the defendant Port of New York Authority has or would be entitled to in the construction, development and operation of the contemplated World Trade Center."[8] I choose to decline to entertain that claim.

Issues of state taxation and public law are more appropriately heard in the state courts, at least in circumstances such as these. Moreover, the New York Courts have already entertained a number of suits attacking the constitutionality of that legislation[9] and have uniformly resolved them in favor of the project. See *Courtesy Sandwich Shops v. Port of New York Authority*, 12 N.Y. 2d 379 (1963), *appeal denied for want of a substantial Fed. question*, 375 U.S. 78 (1963); *In the Matter of the Port of New York Authority* (World Trade Center), 18 N.Y. 2d 250 (1966), *cert. denied sub. nom. McInness v. Port of New York Authority*, 385 U.S. 1006 (1967); *cf. Bush Terminal Co. v. City of New York et al.*, 282 N.Y. 306 (1940).

Courtesy, supra, presented a challenge to the statutory authorization granting eminent domain powers to the Port Authority for the purposes of the World Trade Center. The Court of Appeals found that the project was for a "public purpose" and sustained the validity of the entire legislative chapter.

Finally, plaintiff's sincerity in raising the issue of tax

exemption is open to question. He has not briefed that issue in the five years which have elapsed since this suit was filed. Additionally, in his Memorandum in Opposition to the Motion to Dismiss filed April 30, 1971, plaintiff stated that this entire suit could be resolved if the Port Authority went forward on a stipulation filed July 24, 1967 providing for the creation of a committee to study the feasibility of constructing a pilot terminal for merchant container vessels on the new land fill site thereby preserving jobs for longshoremen. This is apparently his real concern and that is an issue into which this Court should not be drawn.

In view of this factor and the continued findings by the highest tribunal of the State of New York that the World Trade Center was created for a "public purpose" and in view of the findings by that Court that the chapter of legislation authorizing that project is constitutional, I decline to exercise my discretion under the Declaratory Judgment Act to entertain this claim.

For the above reasons, the motions of al parties to dismiss is granted.

So ordered.

Dated: New York, N.Y.
March 28, 1972

Arnold Bauman
U.S.D.J.

FOOTNOTES

[1]Because of the disposition rendered, it is not necessary to determine whether this is in fact a class action under Rule 23.

[2]The permit was issued pursuant to Title 33 U.S.C. Section 403, which provides:

"The creation of any obstruction not affirmatively authorized by Congress, to the navigable capacity of any of the waters of the United States is prohibited; and it shall not be Lawful to build or commence the building of any wharf, pier, dolphin boom, weir, break-water, bulkhead, jetty, or other structures in any port, roadstead, haven, harbor, canal, navigable river, or other water of the United States, outside established harbor lines, or where no harbor lines have been established, except on plans recommended by the Chief of Engineers and authorized by the Secretary of the Army; and it shall not be lawful to excavate or fill, or in any manner to alter or modify the course, location, condition, or capacity of, any port, roadstead, haven, harbor, canal, lake, harbor of refuge, or inclosure within the limits of any breakwater, or of the channel of any navigable water of the United States, unless the work has been recommended by the Chief of Engineers and authorized by the Secretary of the Army prior to beginning the same."

[3]See the long line of cases following *Nebbia v. New York*, 291 U.S. 501 (1934) (state legislation) and *United States v. Carolene Products*, 304 U.S. 144 (1938) (federal legislation).

[4]Title 5 U.S.C. Section 701, et seq.

[5]Title 28 U.S.C. Sections 1331, 1337.

[6]Pub. L. 90-483, Title I, Section 113, Aug. 13, 1968, 82 Stat. 736, Title 33 U.S.C. Section 59c-1, which provides:

"Those portions of the East and Hudson Rivers in New York County, State of New York, lying shoreward of a line within the United States Pierhead Line as it exists on August 13, 1968, of this Act and bounded on the north by the north side of Spring Street extended westerly and the south side of Robert F. Wagner, Senior Place extended eastwardly, are hereby declared to be nonnavigable waters of the United

States within the meaning of the laws of the United States. This declaration shall apply only to portions of the above described area which are bulkheaded and filled. Plans for bulkheading and filling shall be approved by the Secretary of the Army, acting through the Chief of Engineers, on the basis of engineering studies to determine the location and structural stability of the bulkheading and filling in order to preserve and maintain the remaining navigable waterway. Local interests shall reimburse the Federal Government for any engineering costs incurred under this section."

[7]See footnote 2 supra. The parties in their memoranda to this Court and in oral argument have raised the issue of the effect of Title 33 U.S. Code Section 59c-1 on this action. All parties agree that the legislation applies to the land fill area in question here; their dispute, however, concerns the legal effect of that legislation on the land fill area.

[8]See Complaint, Request For Relief, Par. 6.

[9]Chapter 209 of the 1962 Session Laws of New York [N.Y. Unconsolidated Laws Section 6601 et. seq. (McKinney, 1971)] provides the authorization for the World Trade Center. Section 11 of that chapter grants tax exempt status to the project and provides in pertinent parts:

"The port authority shall be required to pay no taxes or assessments upon any of the property acquired or used by it for any of the purposes of this act or upon any deed, mortgage or other instrument affecting such property or upon the recording of any such instrument. However, to the end that no municipality shall suffer undue loss of taxes and assessments by reason of the acquisition and ownership of property by the port authority for any of the purposes of this act, the port authority is hereby authorized and empowered, in its discretion, to enter into a voluntary agreement or agreements with any municipality whereby the port authority will undertake to pay in lieu of taxes a fair and reasonable sum or sums annually in connection with any real property acquired and owned by the port authority for any of the purposes of this act.***."